



Appeal Decision

Inquiry held on 7 & 8 April 2010

Site visit made on 8 April 2010

by **Jane Miles BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
14 May 2010

Appeal Ref: APP/M5450/A/09/2117917

19-23 High Street, Pinner, London HA5 5PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Starbucks Coffee Co (UK) Ltd against the Council of the London Borough of Harrow.
- The application ref: P/2126/09, is dated 14 September 2009.
- The development proposed is change of use from retail (Class A1) to a mixed use as a coffee shop (Classes A1/A3).

Decision

1. I allow the appeal, and grant planning permission for change of use from retail (Class A1) to a mixed use as a coffee shop (Classes A1/A3) at 19-23 High Street, Pinner, London HA5 5PJ, in accordance with the terms of the application, ref: P/2126/09, dated 14 September 2009, and the plans submitted with it, subject to the following conditions:
 - 1) The premises shall not be used other than as a coffee shop serving coffee and other hot and cold drinks, sandwiches and similar light refreshments, for consumption on or off the premises.
 - 2) No primary cooking of unprepared food shall be carried out on the premises. Only reheated or cold food that has been prepared elsewhere shall be served on the premises.

Procedural Matters

2. In the interests of clarity, and as agreed at the inquiry, the wording in the above description varies slightly from that on the application form and from that used by the Council. As the coffee shop has been operating since November 2007, the appeal application is a retrospective one, for the use as already existing. It follows unsuccessful applications for a certificate of lawfulness and for planning permission, and the service of an enforcement notice (which has taken effect).
3. The Council decided after the appeal was lodged that, had it been in a position to do so, it would have refused this second application on the basis that it results in an unacceptable loss of retail frontage and a harmful concentration of non-retail uses in this part of the Pinner District Centre, leading to a loss of vitality of the shopping parade and the Centre as a whole, contrary to saved Policy EM16 of the Harrow Unitary Development Plan (2004) (UDP).

Reasons

4. The premises are in the Pinner High Street Conservation Area but, having regard to the nature of the surroundings, I am satisfied that the proposal does at least preserve the Conservation Area's character and appearance. Thus the **main issue** in this appeal is the effect of the proposal on the vitality and viability of the Pinner District Centre, which is a second tier centre in the hierarchy identified in the UDP.
5. The existing ground floor coffee shop use operates in a similar way to many other Starbucks outlets around the country: it involves the sale of drinks and (mainly cold) food for consumption on or off the premises, together with retail sales of coffee and associated merchandise. The Council and appellant now agree that this is a mixed use, with significant elements of both retail and cafe uses (Classes A1 and A3 of the *Town & Country Planning (Use Classes) Order 1987* as amended). As such, it is a sui generis use. Having regard to all the evidence before me, I take the same view.
6. This mixed use of the premises does mean the loss of a wholly Class A1 retail unit. A key objective of UDP policies is to ensure that District Centres such as this one continue to provide good shopping facilities whilst maintaining the balanced range of other uses essential to their vitality. Pursuant to this objective, primary and secondary shopping frontages are defined in the UDP. In primary frontages, which in Pinner include High Street and most of Bridge Street, it is expected that A1 uses will continue to be the 'overwhelming' use.
7. UDP Policy EM16 allows for changes of use in primary frontages from Class A1 to Class A2 or Class A3 (food and drink uses - now Classes A3, A4 and A5) provided five criteria are met. Although the coffee shop does not fit neatly into any single one of these use classes, the key criteria in this case are B and C. It is common ground that the length of primary frontage in non-retail use in this District Centre already exceeds the relevant threshold of 25%. Thus, in adding to the length of non-retail frontage, the coffee shop use conflicts with EM16(B). Less clear cut is whether there is a conflict with EM16(C), which requires that a change of use pursuant to the policy should not create or add to 'a harmful concentration' of non-retail uses.
8. I acknowledge that there is a breach of Policy EM16(B), but it is necessary to consider this in the light of the supporting text, the UDP policy objectives, and any other material considerations. The text notes (in paragraph 7.61) that the percentage limits indicate the level at which the amount of non-retail activity *may* begin to harm a centre's character and vitality (my emphasis): this phrasing does not suggest the percentages identified necessarily represent a critical balance.
9. It continues that, for a non-retail proposal above the relevant limit, particular benefits would have to be demonstrated to outweigh the potential adverse impact on vitality and viability. This does not imply to me a blanket restriction on any loss of retail units once the relevant threshold is reached, but points to the need for a more detailed consideration of the impact of any such proposal.

The policy context in the Epping appeal¹, on which the Council relies, does not appear to have been comparable in this respect.

10. With regard to 'particular benefits', the largely undisputed evidence (from till receipts) indicates that in this coffee shop around 45% of transactions in 2009 were for take out/retail sales (compared with an earlier figure of 35%). Either figure, in my opinion, amounts to a significant retail element even though, in terms of its appearance in the street and the use of its floorspace, the character of the premises is more akin to that of a cafe than a shop. Thus unlike many, if not most, of the Class A2 and A3/4/5 uses with which Policy EM16 is concerned, this particular use means that the unit retains a significant element of its retail function. I consider it reasonable to count this as a major benefit of the proposal.
11. A patronage/footfall survey and a customer survey, undertaken for the appellant by independent market research companies, have been provided and, again, the results are largely undisputed by the Council. Bearing in mind the methodology, I have no reason to doubt the findings of either survey, although I note the limitations of a customer survey restricted to patrons of Starbucks itself. Nonetheless there can be little doubt that this coffee shop attracts substantially higher numbers of people than any of the other units surveyed, which included A1 and A3 uses, in High Street and Bridge Street. I appreciate that there is no comparable information for the situation pre-Starbucks but, given the results of the patronage survey in relation to retail uses such as the chemist, book and card shops in particular, I consider it highly unlikely that a wholly retail use would have attracted similar or larger numbers.
12. In generating such high levels of activity throughout the normal shopping day, in part due to its retail element, I consider that the coffee shop use is beneficial to the vitality of the primary shopping frontage, despite the loss of some retail floorspace. In this respect, bearing in mind also that footfall is a key contributor to vitality, the value of Starbucks is all the greater in bringing people into High Street, which is agreed to be quieter and less busy as a shopping street than Bridge Street. Moreover, whilst various elements of a Starbucks can be found in other outlets, its particular format combining retail sales, cafe and social meeting place does in my opinion add something different to the retail mix in the District Centre, improving choice and thereby according with current national policy objectives in PPS4².
13. During the inquiry my attention was drawn to some differences between the new PPS4 and the previous PPS6³ (both of which post-date the UDP) with the suggestion that these reduce the weight to be given to UDP Policy EM16. It seems to me that most of these are changes in emphasis rather than fundamental changes in policy. There is reference to setting flexible policies, able to respond to changing economic circumstances. This features in the Keynsham decision issued on 7 April 2010⁴, but that appeal related to a property which had remained vacant for some time despite continued marketing, which is quite a different situation from the one in this appeal.

¹ Appeal ref: APP/J1535/C/06/2031060

² Planning Policy Statement 4: Planning for Sustainable Economic Growth (published 29 December 2009)

³ Planning Policy Statement 6: Planning for Town Centres (2005)

⁴ Appeal ref: APP/F0114/A/09/2116869

14. It is the case however that the advice at paragraph 2.17 of PPS6, that primary frontages 'should' contain a high proportion of retail uses, is not carried forward as positive policy guidance in PPS4. Primary frontages are described in Annex B to PPS4 as 'likely' to include a high proportion of retail uses, but there is no longer an explicit expectation that they should do so. To my mind this is part of a generally more flexible approach, focusing on planning for consumer choice and promoting competitive town centres to a greater extent than previously. As already explained, I consider that this Starbucks coffee shop would be beneficial in improving choice.
15. To my mind the above matters are all benefits particular to this Starbucks outlet, which support the proposal and may properly be weighed against the conflict with Policy EM16(B). Criterion B relates to the District Centre as a whole and it is agreed that, with the appeal premises retained in A1 use, the percentage of non-retail uses in the primary frontages is 32.4%. With Starbucks operating, this rises to 33.5%. Thus, before Starbucks, the non-retail frontage was already some 7.4% above the 25% threshold.
16. At first sight this appears to be a significant breach of the policy but it also appears probable, from the limited information available, that this has been the situation in Pinner for many years. There is very little of substance to indicate that A1 units have been lost, either recently or before the current UDP was adopted, or that there have been pressures for changes away from A1 in the primary frontage. I consider it reasonable to take these matters into account, bearing in mind also the age of the UDP which established the extent of the primary frontage and percentage thresholds.
17. Moreover there is no dispute that the District Centre remains healthy and vibrant, despite well over 25% of primary frontages in non-retail uses. It has a good mix of retail and other uses appropriate to its function, and few vacant units. The recent Retail Study Review⁵ undertaken for the Council, which took account of the appeal premises as a Starbucks outlet, did not identify concerns or issues arising from the numbers of non-retail uses in general, or of A3 and similar uses in particular. There is no evidence before me of any harm resulting from the coffee shop use, which has been operating for well over a year, nor any substantive evidence of unsatisfied demand for retail units.
18. These are all relevant considerations which also weigh in favour of the proposal. Thus, and notwithstanding a different approach by the Inspector in the Epping appeal, I am not persuaded that a 1.1% increase in the length of non-retail frontage, resulting from the Starbucks use, undermines the overall objective of ensuring Pinner's continuing vitality and viability.
19. Turning now to criterion C of Policy EM16, this aims to ensure dispersal of non-retail uses throughout a centre, avoiding clusters which may weaken shopping or adversely affect retail character. Unlike criterion B, no threshold or other measure is specified to identify a 'harmful concentration' which might adversely affect the retail character of the primary area. However the supporting text advises this is most likely to arise when a cluster or group of such uses begins to predominate within a significant length of frontage, thereby prejudicing its retail function.

⁵ London Borough of Harrow Retail Study Review by Nathaniel Lichfield and Partners, September 2009

20. The relevant frontage in this case is agreed to be nos. 1-27 High Street. If the appeal premises are counted as non-retail, then four of the twelve units, or 39% of this frontage, are in non-retail use. Since 'predominant' must, at the very least, mean more than half, I am not persuaded these figures amount to non-retail uses beginning to predominate. Moreover Starbucks retains a significant retail function, and thus much of the comings and goings associated with it contribute to the street's retail character and vitality.
21. The other three units in this particular frontage are all in A3 use: the one adjacent to Starbucks is separated from the other two by an intervening retail unit and thus, in visual terms, all four are close together. However the Council's own description in a recent SPD⁶ suggests that cafes, bars and restaurants, together with specialist shops, are long established as part of High Street's character. The addition of Starbucks with its retail element would not to my mind significantly alter that character or amount to a harmful concentration of A3 uses. Nor would it have a material adverse impact on the retail character of the primary area, or of this frontage where Class A1 retail units would remain predominant.
22. In summary, whilst I acknowledge that the appeal proposal results in the loss of a wholly retail unit, I have found insufficient grounds to conclude that this results in any material adverse impacts on the vitality and viability of the Pinner District Centre. Moreover I have found that, due to the particular nature of this sui generis coffee shop use, it has particular benefits resulting in a positive contribution to the Centre's vitality and retail function. Therefore I conclude overall that the conflict with UDP Policy EM16(B) is outweighed by other material considerations.
23. In reaching this conclusion I have taken into account the representations of The Pinner Association, including its references to the scale and location of the premises, with a return frontage to Bishops Walk. I have noted the various appeal decisions put before me, and the associated arguments, which demonstrate the wide variation in the factors and criteria which will be relevant in any one case. Thus, although I have reached similar conclusions to other Inspectors on some general principles, such as the nature of the Starbucks use for example, I have determined this appeal primarily on its merits in the light of the development plan and other material considerations.
24. I have had regard to all other matters raised, but have found nothing sufficient to alter or outweigh my overall conclusion, which indicates that the appeal should succeed. With regard to conditions, I consider that it is reasonable and necessary to define more precisely the nature of the use, to ensure continuation of the retail function and prevent a more general cafe use, which would have different implications for the Centre's vitality and viability. Thus I shall impose the two conditions agreed in the statement of common ground, rather than the more general condition used in the Keynsham decision.

Jane Miles

INSPECTOR

⁶ Para 3.19 of the Supplementary Planning Document – Pinner Conservation Areas (2009)

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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He called

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FOR THE APPELLANT:

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INTERESTED PERSONS:

Geoff Wheal Chairman of The Pinner Association's Planning
Sub-Committee

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Council's inquiry notification letter and list of those notified
- 2 Substitute page 4 of Mrs Jarvis's main proof
- 3 Mrs Jarvis's summary proof
- 4 Opening statement for the appellant
- 5 Opening statement for the Council
- 6 Extracts from The London Plan 2008
- 7 Extracts from Supplementary Planning Document, Pinner Conservation Areas (2009)
- 8 Copy of Keynsham appeal decision ref: APP/F0114/A/09/2116869, dated 7 April 2010, submitted by the appellant
- 9 Closing submissions for the Council
- 10 Closing submissions for the appellant